XII-189 / (Jail)
C. J. P. R. 11/94/2,000

CF0000060378

Cr. A 2364/97

(2)

APPEAL OF PRISONER

Division Bench (Criminal)

No. 6034 Name ... लल्लूराम

Father's name ...लट्टीराम... ग्राम-...पनारपाट बंशीपुर...थाना-...सीतापुर.....

Residence ...सरगुजा (म०प्र०)..... Age .....२९.....

Sentenced to ...आजीवन कारावास...एवं... On ...11-7-97.....

Under section ...३०२ I.P.C..... by माननीय द्वितीय अपर सत्र न्यायालय अंबिकापुर जिला - सरगुजा (म०प्र०)

S.T. No - 185/96

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement ....

2 Date on which copy received ....

3 Date on which Appeal sent ....

4 Whether the prisoner wishes to be represented or not - Yes / No

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No.... 6034 ..... Name ...लल्लूराम S/o लट्टीराम.....

Confined in ..... केन्द्रीय ..... Jail ...रायपुर (म०प्र०)..... .....

No....328/सिविल/97... - Dated ...25/09/1997..... .....

Forwarded to the CHIEF JUDICIAL MAGISTRATE माननीय अतिरिक्त पंजीयक महोदय माननीय उच्च न्यायालय म०प्र० जबलपुर togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्नः- S.T. No -185/96 की सत्यापित प्रतिलिपी।

Superintendent
Central Jail
Jail Rainur (M.P.)

Date of receipt in ..... office .....

Date of receipt record to accompany the .....

Memo of Appeal to the Appellate court .....

No ..... Dated ..... 199.....

Forwarded to the .....

Date of receipt in Appellate Court .....

High Court of Judicature
JABALPUR
Date 4 OCT 1997
Registration No. 691
Receipt Clerk
High Court

(P. T. O.)

XI-HC-22

(14)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A. 2364/97 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Division Bench: - **Hon'ble Mr. L.C. Bhadoo and** **Hon'ble Mr. Dhirendra Mishra, JJ.** **3-2-2006** When the appeal is called out, none present on behalf of the appellant. No representation is made. Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. M.P.S. Bhatia, Panel Lawyer for the State/respondent. As this appeal has been received on transfer from Madhya Pradesh High Court, Jabalpur, therefore, there is no representation on behalf of the accused/appellant. Mrs. Nisha Chaturvedi, Advocate, is appointed as amicus curiae to argue the appeal on behalf of the accused/appellant. The Secretary, High Court Legal Aid Committee to pass formal order regarding her appointment as counsel on behalf of the accused/appellant. Skeleton paper book was handed over to Mrs. Nisha Chaturvedi, learned counsel for the appellant. Heard Mrs. Nisha Chaturvedi, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor with Mr. M.P.S. Bhatia, learned Panel Lawyer on behalf of the State/respondent. Oral judgment dictated on *Dais.* **Per L.C. Bhadoo, J: -** By this appeal under Section 374 (2) of the Cr.P.C. the accused/ appellant has questioned the legality of the judgment of conviction and order	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A.2364/97 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of sentence dated 11-7-1997 passed by 2nd Additional Sessions Judge, Ambikapur, in Sessions Trial No.185/96, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the murder of his wife Saniyaro Bai, convicted him under Section 302 of the I.P.C. and sentenced to undergo imprisonment for life and pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for one month.

Case of the prosecution is that in the morning of 3-3-1996 accused/appellant Lallu Ram along with his wife Saniyaro Bai went for consuming liquor along with neighbours Rameshwar, Buddhe (PW-3) and his wife. In the evening when Lallu Ram was returning along with his wife, he demanded food from Saniyaro Bai as she was not able to cook food, therefore, the accused started beating Saniyaro Bai with fist and kicks. On hearing the screams of Saniyaro Bai, Nehari (PW-2), her sister, came and asked Lallu Ram not to beat Saniyaro Bai on which the accused threatened her also and closed the door of the house. By next day morning, Saniyaro Bai became unconscious and by evening, she died. Merg intimation Ex.P-6 was given by Heerasai (PW-1), brother of Saniyaro Bai and based on that, the Station House Officer, Police Station: Sitapur reduced the merg intimation into writing. On the basis of Dehati Nalishi (Ex.P-4), Crime No.0/96 under Section 302 of the I.P.C. was registered and F.I.R. (Ex.P-3) was also registered. The Station House Officer left for the scene of occurrence and after giving notice (Ex.P-7) to the Panchas, prepared Panchnama of the body Ex.P-8. The body of Saniyaro Bai was sent for post-mortem examination under Ex.P-9 to the Primary Health Centre, Sitapur, where Dr. K.K. Dutta (PW-4) conducted post-mortem on the body of Saniyaro Bai and prepared the post-

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A. 236/97 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

mortem report Ex.P-1. The doctor opined that the death of Saniyaro Bai was as a result of comma on account of head injury.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Ambikapur, who in turn committed the case to the Sessions Judge, Ambikapur, from where learned 2nd Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish crime against the accused examined seven witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence, stated that he is innocent and has been falsely implicated in the crime.

The homicidal death of Saniyaro Bai is not in dispute.

As far as the involvement of the accused/appellant in committing the crime in question is concerned, learned counsel for the accused/appellant argued that there was no intention of the accused to cause the death of his wife. When Saniyaro Bai refused to provide food that enraged the accused, then he assaulted Saniyaro Bai with fists and kicks, therefore, offence against the accused/appellant does not travel beyond Section 304 Part-II of the I.P.C.

On the other hand, learned Additional Public Prosecutor supported the judgment of the trial Court.

Heerasai (PW-1) has stated in his evidence that on the fateful day he was going to bring wood, when he reached near the house of Saniyaro Bai he heard ~~that sound was coming~~ 'h cries h from inside 'Save Save' and Saniyaro Bai was

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A.2364/97 सन् 200—

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

saying that now she will not survive. He found that the house was locked from inside and sound of Marpit was coming from the house. The accused & Saniyaro Bai were in the house and the accused was beating Saniyaro Bai with fists & legs. He returned to his house. Next day, he went to the Police Station and lodged the report. Nehari Bai (PW-2) has stated in her evidence that she is residing in the nieghbourhood of the accused, on the fateful day she heard the sound of quarrel between the accused & Saniyaro Bai, and the accused assaulted Saniyaro Bai with legs & fists as a result of which she died. Dr. K.K. Dutta (PW-4) has stated in his evidence that there was contusion on left side of the head in the size of 8 x 3 cms. and swelling in front of the head. On opening of the body he found that clotted blood was present in the frontal and below right temporal region and there was fracture in the right temporal bone and left frontal bone. The death was homicidal in nature. Therefore, in view of the above, it is established that the accused was the author of the crime in question.

As far as the argument advanced by learned counsel for the appellant, it has come in the evidence that when Saniyaro Bai refused to provide food to the accused, that enraged the accused and he started assaulting Saniyaro Bai with kicks & fists as a result of which Saniyaro Bai received injuries on head and she died. Cause of crime was refusal of providing food to the accused by the deceased, the accused assaulted the deceased without pre-meditation in a sudden quarrel, all of a sudden, and the intention to cause death is missing in the crime in question. Therefore, offence under Section 304 Part-II of the I.P.C. is made out against the accused.

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XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.2364/97 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	In the result, the appeal partly succeeds and the same is partly allowed. Conviction and sentence awarded to the accused/appellant under Section 302 of the I.P.C. are set aside, instead thereof he is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo rigorous imprisonment for nine years. The accused is in custody since more than nine years, which has not been disputed by learned Additional Public Prosecutor. Therefore, the accused be set at liberty forthwith, if not required in any other case. **Parties are entitled for certified copy of this order.** **Sd/-** **L.C. Bhadoo** **Judge** **Sd/-** **Dhirendra Mishra** **Judge**	

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